which were produced through the claimant's personal direction." The inference that this sum represented the value of the deceased's services to the business is based upon a careful analysis of detailed evidence concerning all the circumstances of the particular business. To the same effect see *Boggess* v. *Balt. & Ohio R. R. Co.*, 234 Pa. 379. And *Pill* v. *Brooklyn Heights R. R. Co.*, 6 Misc. Rep. (N. Y.) 267, jt. aff. 148 N. Y. 747, where it was held that the earning capacity of a corset maker employing two assistants was measured by the profits of the business. But see *Silsby* v. *Mich. Car Co.*, 95 Mich. 204, *contra*. See also note in 52 L. R. A. 33.

DAMAGES—RULE OF HIGHEST INTERMEDIATE VALUE—ILLEGAL SALE OF MARGINED STOCK.—Smith & Co. carried stock on margin for Berberich, and wrongfully sold it without notice. *Held*, that the proper measure of damages is the highest market value of the stock between the time of the conversion and the trial. *In re Berberich's Estate* (Pa., 1919), 107 Atl. 813.

Concerning the measure of damages for conversion of property of fluctuating value three rules have been followed. First, the value of the property at the time of conversion. *Layman* v. *Slocomb & Co.*, 7 Penn. (Del.) 403; *Continental Divide Mining Co.* v. *Bliley*, 23 Colo. 160. Second, the highest market value between the time of conversion and the trial. *Shroul* v. *Sloan*, 241 Pa. 284. Third, the highest market value between the time of conversion and a reasonable time to enable the owner to replace the property after he received notice of the conversion. *Baker* v. *Drake*, 53 N. Y. 211, 217; *Citizens' Street Ry. Co.* v. *Robbins*, 144 Ind. 671; *Page* v. *Fowler*, 39 Cal. 412; *Galigher* v. *Jones*, 129 U. S. 193. What constitutes a reasonable time is a question of law for the court where the facts are undisputed. *Wright* v. *Bank of Metropolis*, 110 N. Y. 237. The language of the court in the principal case indicates that the court believed it had only a choice between the first two rules. Clearly, the first rule is not a good one in such cases, for it enables the converter to buy the stock from the plaintiff at its present value whenever the wrongdoer so wills. And the second rule (followed in the principal case) encourages the plaintiff, by delaying the commencement of his action, to speculate upon the chances of higher markets. In addition, it is decidedly in conflict with the well-established rule that a party is required to use reasonable diligence to mitigate damages. *Wabash R. R. Co.* v. *Campbell*, 219 Ill. 312; *Wicker* v. *Hoppock*, 6 Wall. (U. S.) 94; 8 RULING CASE LAW 442. The third rule is consonant with the fundamental purpose of the law (in cases not justifying exemplary damages), viz., reparation to the injured party; and the said rule also harmonizes with the principle referred to above, because it requires the injured party to use due diligence to minimize the damage. All the plaintiff can reasonably demand is to be restored to his status as stockholder, and under the third rule he is allowed to invoke the remedy of self-help within a reasonable time after learning of the conversion and then call upon the tort feasor for indemnity. It must be admitted that in case the injured party is financially unable to repurchase the stock within the reasonable time, he is not restored to his former position under the third rule, but this objection is applicable to all rules of damages. Damages, being

per se a substitute, are, in the nature of things, an imperfect remedy. See also 12 MICH. L. REV. 491; 8 id. 142.

FISHING—CONFLICT WITH RIGHT OF NAVIGATION.—In an action for damages against the owner of a vessel for running through a fishing trap, *held*, that the instruction of the lower court, to the effect that "it was the duty of the defendant to operate and navigate his vessel in the channel or usual course in which vessels said river should be navigated" was erroneous, since the failure so to navigate is not negligence in itself, but merely evidence of negligence. *Anderson* v. *Columbia Contract Company* (Ore., 1919), 184 Pac. 240.

The court found, however, that one exercising the right of navigation is bound to use ordinary care and due regard for the property rights of fishermen. This is an interesting development of the old rule as laid down in an anonymous note reported in 1 Camp. 517, where it was stated that if the navigator acted maliciously and wantonly the plaintiff was entitled to a verdict, but not otherwise. In *Post* v. *Munn*, 1 South. (N. J.) 61, 7 Am. Dec. 570, the first of the American cases on the subject, the necessity of wantonness and malice, in order to hold the master of the vessel liable, is at least strongly implied. *Cobb* v. *Bennett*, 75 Pa. 326, and *The People's Ice* v. *The Steamer Excelsior*, 44 Mich. 229, are substantially in accord. See also, *Hopkins* v. *Norfolk and Southern Railroad Company*, 131 N. C. 463, and *Jones* v. *Keeling*, 46 N. C. 299. *Wright* v. *Mulvaney*, 78 Wis. 89, takes the first step toward the more liberal doctrine. There the defense maintained that because of the paramountcy of the right of navigation, the defendant could not be held liable except for wantonness or intentional wrong, and cited *Post* v. *Munn*, *Cobb* v. *Bennett*, *supra*, and GOULD, WATERS, § 87. The court did not attempt to negative the doctrine referred to there, but held that the rule derived from them was to the effect that the master of the vessel is liable for damage to fishermen if he has acted wantonly and maliciously, and has done unnecessary damage. Since the defendant in this case could have avoided the net by using even slight care, the court decided the damage had been unnecessary, and that the defendant was liable even though the hitherto important element of wantonness and malice were lacking. *Horst* v. *Columbia Contract Company*, 89 Ore. 344, decided a year before the present case, against the same defendant, went so far as to hold that reasonable care was necessary on the part of those in charge of the steamboat to prevent doing injury to the plaintiff's boat and net. This decision may have been affected to some extent by the fact that the plaintiff, in addition to fishing, was exercising a right of navigation, though one subservient to that of the larger craft. It is worthy of note that the rule of the present case was approximated as early as 1860 in a Canadian case, *Foley* v. *Wolhaupter*, 4 Allen (N. B.) 90 and 167, where it was held that the navigator was liable for negligence, and that wantonness and malice were not important factors. Two of the judges in this case went so far as to lay down the dictum that in their opinion, the right of fishing was just as important as the right of navigation. No American court has gone so far as to question the paramountcy of the